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9 Wolpoff & Abramson LLP and
10 MBNA America Bank, N.A.

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 JOHN GORMAN,

14 Plaintiff,

15 vs.

16 WOLPOFF & ABRAMSON, LLP;
17 MBNA AMERICA BANK, N.A., and
18 Does 1 through 100, inclusive,

19 Defendants.

20 CASE NO.: C-04-4507 JW

21 STIPULATED PROTECTIVE ORDER

FILED
JAN 30 2006
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation would be
5 warranted. The parties further acknowledge, as set forth in Section 10, below, that this
6 Stipulated Protective Order creates no entitlement to file confidential information under
7 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects
8 the standards that will be applied when a party seeks permission from the court to file
9 material under seal.

10 2. DEFINITIONS

11 2.1 Party: any party to this action, including all of its officers, directors,
12 employees, consultants, retained experts, and outside counsel (and their support staff).

13 2.2 Disclosure or Discovery Material: all items or information,
14 regardless of the medium or manner generated, stored, or maintained (including, among
15 other things, testimony, transcripts, or tangible things) that are produced or generated in
16 disclosures or responses to discovery in this matter.

17 2.3 "Confidential" Information or Items: information (regardless of how
18 generated, stored or maintained) or tangible things that qualify for protection under
19 standards developed under F.R.Civ.P. 26(c).

20 2.4 "Highly Confidential - Attorneys' Eyes Only" Information or Items:
21 extremely sensitive "Confidential Information or Items" whose disclosure to another
22 Party or non-party would created a substantial risk of serious injury that could not be
23 avoided by less restrictive means.

24 2.5 Receiving Party: a Party that receives Disclosure or Discovery
25 Material from a Producing Party.

26 2.6 Producing Party: a Party or non-party that produces Disclosure or
27 Discovery Material in this action.

28 2.7 Designating Party: a Party or non-party that designates information

1 or items that it produces in disclosures or in responses to discovery as "Confidential" or
 2 Highly Confidential - Attorneys' Eyes Only."

3 2.8 Protected Material: any Disclosure or Discovery Material that is
 4 designated as "Confidential" or as Highly Confidential - Attorneys' Eyes Only."

5 2.9 Outside Counsel: attorneys who are not employees of a Party but
 6 who are retained to represent or advise a Party in this action.

7 2.10 House Counsel: attorneys who are employees of a Party.

8 2.11 Counsel: (without qualifier): Outside Counsel and House Counsel
 9 (as well as their support staffs).

10 2.12 Expert: a person with specialized knowledge or experience in a
 11 matter pertinent to the litigation who has been retained by a Party or its counsel to serve
 12 as an expert witness or as a consultant in this action and who is not a past or a current
 13 employee of a Party or a competitor of a Party's. This definition includes a professional
 14 jury or trial consultant retained in connection with this litigation.

15 2.13 Professional Vendors: persons or entities that provide litigation
 16 support services (e.g. photocopying; videotaping; translating; class administration;
 17 preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or
 18 medium; etc.) and their employees and subcontractors.

19 20 3. SCOPE

21 The protections by this Stipulation and Order cover not only Protected Material (as
 22 defined above), but also any information copied or extracted therefrom, as well as all
 23 copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or
 24 presentations by parties or counsel to or in court or in other settings that might reveal
 25 Protected Material.

26 27 4. DURATION

28 Even after the termination of this litigation, the confidentiality obligations imposed

1 by this Order shall remain in effect until a Designating Party agrees otherwise in writing
2 or a court order otherwise directs.

3
4 5. DESIGNATING PROTECTED MATERIAL

5 5.1 Exercise of Restraint and Care in Designating Material for Protection:

6 Each Party or non-party that designates information or items for protection
7 under this Order must take care to limit any such designation to specific material that
8 qualifies under the appropriate standards. A Designating Party must take care to
9 designate for protection only those parts of material, documents, items, or oral or written
10 communications that qualify - so that other portions of the material documents, items or
11 communications for which protection is not warranted are not swept unjustifiably withing
12 the ambit of this Order.

13 Mass, indiscriminate, or routinized designations are prohibited.
14 Designations that are shown to be clearly unjustified, or that have been made for an
15 improper purpose (*e.g.* to unnecessarily encumber or retard the case development process,
16 or to impose unnecessary expenses and burdens on other parties), expose the Designating
17 Party to sanctions.

18 If it comes to a Party's or a non-party's attention that information or items
19 that it designated for protection do not quality for protection at all, or do not quality for
20 the level of protection initially asserted, that Party or non-party must promptly notify all
21 other parties that it is withdrawing the mistaken designation.

22 5.2 Manner and Timing of Designations: Except as otherwise provided
23 in this Order (*see, e.g.* second paragraph of section 5.2(a), below), or as otherwise
24 stipulated or ordered, material that qualifies for protection under this Order must be
25 clearly so designated before the material is disclosed or produced; provided, however,
26 that the parties may designate materials as protected if they were previously produced as
27 part of their initial disclosures and if they otherwise qualify for protection.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (apart from transcripts of
3 depositions or other pretrial or trial proceedings), that the Producing Party affix the
4 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
5 ONLY" at the top of each page that contained protected material. If only a portion of
6 portions of the material on a page qualifies for protection, the Producing Party also must
7 clearly identify the protected portion(s) (e.g., by making appropriate markings in the
8 margins) and must specify, for each portion, the level of protection being asserted (either
9 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY").

10 A Party or non-party that makes original documents or materials
11 available for inspection need not designate them for protection until after the inspecting
12 Party has indicated which material it would like copied and produced. During the
13 inspection and before the designation, all of the material made available for inspection
14 shall be deemed "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY." After
15 the inspecting Party has identified the document it wants copied and produced, the
16 Producing Party must determine which documents, or portions thereof, qualify for
17 protection under this Order, then, before producing the specified documents, the
18 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
19 CONFIDENTIAL - ATTORNEYS' EYES ONLY") at the top of each page that contains
20 Protected Material. If only a portion or portions of the material on a page qualifies for
21 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
22 making appropriate markings in the margins) and must specify, for each portion, the level
23 of protection being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL
24 - ATTORNEYS' EYES ONLY").

25 (b) for testimony given in deposition or in other pretrial or trial
26 proceedings, that the Party or non-party offering or sponsoring the testimony identify on
27 the record, before the close of the deposition, hearing, or other proceeding, all protected
28 testimony, and further specify any portions of the testimony that qualify as "HIGHLY

1 CONFIDENTIAL - ATTORNEYS' EYES ONLY." When it is impractical to identify
2 separately each portion of testimony that is entitled to protection, and when it appears that
3 substantial portions of the testimony may qualify for protection, the Party of non-party
4 that sponsors, offers, or gives the testimony may invoke on the record (before the
5 deposition or proceeding is concluded) a right to have up to 20 days from the date of
6 receipt of the transcript to identify the specific portions of the testimony as to which
7 protection is sought and to specify that level of protection being asserted
8 ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY").
9 Only those portions of the testimony that are appropriately designated for protection
10 within the 20 days shall be covered by the provisions of this Stipulated Protective Order.

11 Transcript pages containing Protected Material must be separately
12 bound by the court reporter, who must affix to the top of each such page the legend
13 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY," as
14 instructed by the Party or non-party offering or sponsoring the witness or presenting the
15 testimony.

16 (c) for information produced in some form other than documentary,
17 and for any other tangible items, that the Producing Party affix in a prominent place on
18 the exterior of the container or containers in which the information or item is stored the
19 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
20 ONLY." If only portions of the information or item warrant protection, the Producing
21 Party, to the extent practicable, shall identify the protected portions, specifying whether
22 they qualify as "Confidential" or as "Highly Confidential - Attorneys' Eyes Only."

23 5.3 Inadvertent Failures to Designate: If timely corrected, an inadvertent
24 failure to designate qualified information or items as "Confidential" or "Highly
25 Confidential - Attorneys' Eyes Only" does not, standing alone, waive the Designating
26 Party's right to secure protection under this Order for such material. If material is
27 appropriately designated as "Confidential" or "Highly Confidential - Attorneys' Eyes
28 Only" after the material was initially produced, the Receiving Party, on timely notification

1 of the designation, must make reasonable efforts to assure that the material is treated in
2 accordance with the provisions of this Order.

3
4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges: Unless a prompt challenge to a Designating
6 Party's confidentiality designation is necessary to avoid foreseeable substantial
7 unfairness, unnecessary economic burdens, or a later significant disruption or delay of the
8 litigation, a Party does not waive its right to challenge a confidentiality designation by
9 electing not to mount a challenge promptly after the original designation is disclosed.

10 6.2 Meet and Confer: A Party that elects to initiate a challenge to a
11 Designating Party's confidentiality designation must do so in good faith and must begin
12 the process by conferring directly with counsel for the Designating Party. In conferring,
13 the challenging Party must explain the basis for its belief that the confidentiality
14 designation was not proper and must give the Designating Party an opportunity to review
15 the designated material, to reconsider the circumstances, and, if no change in designation
16 is offered, to explain the basis for the chosen designation. A challenging Party may
17 proceed to the next stage of the challenge process only if it has engaged in this meet and
18 confer process first.

19 6.3 Judicial Intervention: A party that elects to press a challenge to a
20 confidentiality designation after reconsidering the justification offered by the Designating
21 Party may file and serve a motion under Civil Rule 7 (and in compliance with Civil Local
22 Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail the
23 basis for the challenge. Each such motion must be accompanied by a competent
24 declaration that affirms that the movant has complied with the meet and confer
25 requirements imposed in the preceding paragraph and that sets forth with specificity the
26 justification for the confidentiality designation that was given by the Designating Party in
27 the meet and confer.

28 The burden of persuasion in any such challenge proceeding shall be on the

1 Designating Party. Until the court rules on the challenge, all parties shall continue to
 2 afford the material in question the level of protection to which it is entitled under the
 3 Producing Party's designation.

4
 5 7. ACCESS TO AN USE OF PROTECTED MATERIAL

6 7.1 Basic Principles: A Receiving Party may use Protected Material that
 7 is disclosed or produced by another Party or by a non-party in connection with this case
 8 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
 9 Material may be disclosed only to the categories of persons and under the conditions
 10 described in this Order. When the litigation has be terminated, a Receiving Party must
 11 comply with the provisions of section 11, below (FINAL DISPOSITION).

12 Protected Material must be stored and maintained by a Receiving Party at a
 13 location and in a secure manner that ensures that access is limited to the persons
 14 authorized under this Order.

15 7.2 Disclosure of "CONFIDENTIAL" Information or Items: Unless
 16 otherwise ordered by the court or permitted in writing by the Designating Party, a
 17 Receiving Party may disclose any information or item designated CONFIDENTIAL only
 18 to:

19 (a) the Receiving Party's Outside Counsel of record in this action, as
 20 well as employees of said Counsel to whom it is reasonably necessary to disclose the
 21 information for this litigation and who have signed the "Agreement to Be Bound by
 22 Protective Order" that is attached hereto as Exhibit A;

23 (b) the officers, directors, and employees (including House Counsel)
 24 of the Receiving Party to whom disclosure is reasonably necessary for this litigation and
 25 who signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

26 (c) experts (as defined in this Order) of the Receiving Party to whom
 27 disclosure is reasonably necessary for this litigation and who have signed the "Agreement
 28 to Be Bound by Protective Order" (Exhibit A);

1 (d) the Court and its personnel;

2 (e) court reporters, their staffs, and professional vendors to whom
3 disclosure is reasonably necessary for this litigation and who have signed the "Agreement
4 to Be Bound by Protective Order" (Exhibit A);

5 (f) during their depositions, witnesses in the action to whom
6 disclosure is reasonably necessary and who have signed the "Agreement to be Bound by
7 Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to
8 depositions that reveal Protected Material must be separately bound by the court reporter
9 and may not be disclosed to anyone except as permitted under this Stipulated Protective
10 Order.

11 (g) the author of the document or the original source of the
12 information.

13 7.3 Disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
14 ONLY" Information or Items: Unless otherwise ordered by the court or permitted in
15 writing by the Designating Party, a Receiving Party may disclose any information or item
16 designated "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" only to:

17 (a) the Receiving Party's Outside Counsel of record in this action, as
18 well as employees of said Counsel to whom it is reasonably necessary to disclose the
19 information for this litigation and who signed the "Agreement to Be Bound by Protective
20 Order" that is attached hereto as Exhibit A;

21 (b) Experts (as defined in this Order) (1) to whom disclosure is
22 reasonably necessary for this litigation, (2) who have signed the "Agreement to Be Bound
23 by Protective Order" (Exhibit A), and (3) as to whom the procedures set forth in
24 paragraph 7, 4, below, have been followed;

25 (c) the Court and its personnel;

26 (d) court reporters, their staffs, and professional vendors to whom
27 disclosure is reasonably necessary for this litigation and who have signed the "Agreement
28 to Be Bound by Protective Order" (Exhibit A); and

1 (e) the author of the document or the original source of the
2 information.

3
4 7.4 Procedures for Approving Disclosure of "HIGHLY CONFIDENTIAL -
5 ATTORNEYS' EYES ONLY" Information or Items to "Experts"

6 (a) Unless otherwise ordered by the court or agreed in writing by the
7 Designating Party, a Party that seeks to disclose to an "Expert" (as defined in this Order)
8 any information or item that has been designated "HIGHLY CONFIDENTIAL -
9 ATTORNEYS' EYES ONLY" first must make a written request to the Designating Party
10 that (1) identifies the specific HIGHLY CONFIDENTIAL information that the Receiving
11 Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert
12 and the city and state of his or her primary residence, (3) attaches a copy of the Expert's
13 current resume, (4) identifies the Expert's current employer(s), (5) identifies each person
14 or entity from whom the Expert has received compensation for work in his or her areas of
15 expertise or to whom the expert has provided professional services at any time during the
16 preceding five years, and (6) identifies (by name and number of the case, filing date, and
17 location of court) any litigation in connection with which the Expert has provided any
18 professional services during the preceding five years.

19 (b) A Party that makes a request and provides the information
20 specified in the preceding paragraph may disclose the subject Protected Material to the
21 identified Expert unless, within seven days of delivering the request, the Party receives a
22 written objection from the Designating Party. Any such objection must set forth in detail
23 the grounds on which it is based.

24 (c) A Party that receives a timely written objections must meet and
25 confer with the Designating Party to try to resolve the matter by agreement. If no
26 agreement is reached, the Party seeking to make the disclosure to the Expert may file a
27 motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5,
28 if applicable) seeking permission from the court to do so. Any such motion must describe

1 the circumstances with specificity, set forth in detail the reasons for which the disclosure
2 to the Expert is reasonably necessary, assess the risk of harm that the disclosure would
3 entail and suggest any additional means that might be used to reduce that risk. In
4 addition, any such motion must be accompanied by a competent declaration in which the
5 movant describes the parties' efforts to resolve the matter by agreement (*i.e.*, the extent
6 and the content of the meet and confer discussions) and sets forth the reasons advanced
7 by the Designating Party for its refusal to approve the disclosure.

8 In any such proceeding the Party opposing disclosure to the Expert
9 shall bear the burden of proving that the risk of harm that the disclosure would entail
10 (under the safeguards proposed) outweighs the Receiving Party's need to disclose the
11 Protected Material to its Expert.

12
13 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
14 IN OTHER LITIGATION

15 If a Receiving Party is served with a subpoena or an order issued in other litigation
16 that would compel disclosure of any information or items designated in this action as
17 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY,"
18 the Receiving Party must so notify the Designating Party, in writing (by fax, if possibly)
19 immediately and in no event more than three court days after receiving the subpoena or
20 order. Such notification must include a copy of the subpoena or court order.

21 The Receiving Party also must immediately inform in writing the Party who caused
22 the subpoena or order to issue in the other litigation that some or all the material covered
23 by the subpoena or order is the subject of this Protective Order. In addition, the
24 Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the
25 Party in the other action that caused the subpoena or order to issue.

26 The purpose of imposing these duties is to alert the interested parties to the
27 existence of this Protective Order to afford the Designating Party in this case an
28 opportunity to try to protect its confidentiality interests in the court from which the

1 subpoena or order issued. The Designating Party shall bear the burdens and the expenses
2 of seeking protection in that court of its confidential material - and nothing in these
3 provisions should be construed as authorizing or encouraging a Receiving Party in this
4 action to disobey a lawful directive from another court.

5
6 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
8 Protected Material to any person or in any circumstance not authorized under this
9 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
10 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
11 all copies of the Protected Material, (c) inform the person or persons to whom
12 unauthorized disclosures were made of all the terms of this Order, and (d) request such
13 person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is
14 attached hereto as Exhibit A.

15
16 10. FILING PROTECTED MATERIAL

17 Without written permission from the Designating Party or a court order secured
18 after appropriate notice to all interested persons, a Party may not file in the public record
19 in this action any Protected Material. A Party that seeks to file under seal any Protected
20 Material must comply with Civil Local Rule 79-5.

21
22 11. FINAL DISPOSITION

23 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty
24 (60) days after the final termination of this action, each Receiving Party must return all
25 Protected material to the Producing Party. As used in this subdivision, "all Protected
26 Material" includes all copies, abstracts, compilations, summaries or any other from of
27 reproducing or capturing any of the Protected Material. With permission in writing from
28 the Designating Party, the Receiving Party may destroy some or all of the Protected

1 Material instead of returning it. Whether the Protected Material is returned or destroyed,
2 the Receiving Party must submit a written certification to the Producing Party (and, if not
3 the same person or entity, to the Designating Party) by the sixty day deadline that
4 identifies (by category, where appropriate) all the Protected material that was returned or
5 destroyed and that affirms that the Receiving Party has not retained any copies, abstracts,
6 compilations, summaries or other forms of reproducing or capturing any of the Protected
7 Material. Notwithstanding this provision, Counsel are entitled to retain any archival copy
8 of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
9 work product, even if such materials contain Protected Material. Any such archival
10 copies that contain or constitute Protected Material remain subject to this Protective Order
11 as set forth in Section 4 (DURATION), above.

12
13 12. MISCELLANEOUS

14 12.1 Right to Further Relief: Nothing in this Order abridges the right of
15 any person to seek its modification by the Court in the future.

16 12.2 Right to Assert Other Objections: By stipulating to the entry of this
17 Protective Order no Party waives any right it otherwise would have to object to disclosing
18 or producing any information or item on any ground not addressed in this Stipulated
19 Protective Order. Similarly, no Party waives any right to object on any ground to use in
20 evidence of any of the material covered by this Protective Order.


21 12.3 Right to Designate Materials Already Produced: The Parties will
22 have ten (10) days from the date this Protective Order is signed and entered by the court
23 to designate materials already produced in this action as "CONFIDENTIAL" or
24 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" within the meaning of this
25 Protective Order.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2
3
4 DATED: January 27, 2006


Attorneys for Plaintiff

5
6 DATED: January 27, 2006


Attorneys for Defendants
Wolpoff & Abramson LLP and
MBNA America Bank, N.A.

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10
11 PURSUANT TO STIPULATION
12 IT IS SO ORDERED.

13 DATED: 1/30/06

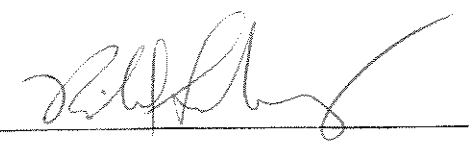

The Honorable Richard Seaborn
United States District Judge
U.S. Magistrate Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ (print or type full name), of _____ (print or type full address), declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on (date) in the case of *Gorman vs. Wolpoff & Abramson, LLP; MBNA America Bank, N.A., et al.* Case No. C-04-4507 JW, and that I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ (print or type full name) of _____ (print or type full address and tel. number) as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____